

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

**RSA No.2716 of 2017 (O&M)
Date of Decision:03.08.2017**

Major Singh

...Appellant

Versus

Karnail Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Jai Bhagwan, Advocate
for the appellant.

ANIL KSHETARPAL, J. (ORAL)

Defendant is in Regular Second Appeal against the concurrent judgments passed by the Courts below.

Plaintiff had filed a suit for mandatory injunction directing the defendant to hand over the possession of land measuring 1 Kanal 10 Marlas fully described in the plaint. It was pleaded by the plaintiff that he is sole owner and defendant is his cousin brother. Plaintiff had claimed that he is a NRI and when he came to the village, he handed over the possession of the suit land to the defendant as licensee. Plaintiff further pleaded that licence has been revoked but defendant has not handed over the possession back to the plaintiff.

In defence, defendant submitted that he is in possession of the property since January, 1981. He further claimed that he came into forcible

possession of the suit land in the month of January, 1981 and hence he has become absolute owner of the property having title by way of prescription of time (adverse possession).

Trial Court after examining the pleadings, framed the following issues on 26.05.2014:

- “1. Whether the plaintiff is entitled for the mandatory injunction as prayed for? OPP*
- 2. Whether the plaintiff is entitled for the permanent prohibitory injunction as prayed for? OPP*
- 3. Whether the defendant is in the adverse possession of suit land? OPD*
- 4. Whether the present suit is not maintainable? OPD*
- 5. Whether the plaintiff is not come to the Court with clean hands and suppressed the material facts from the Court? OPD*
- 6. Whether the plaintiff has no cause of action or locus-standi to file the present suit? OPD*
- 7. Relief.”*

Learned trial Court after appreciating the evidence available on the file decreed the suit filed by the plaintiff.

Defendant filed first appeal. The first appeal filed by the defendant was also ordered to be dismissed. The Court found that the defendant has not been able to establish his title by way of adverse possession/by prescription of time.

This appeal has been filed by the defendant.

I have heard the learned counsel for the appellant at length.

Learned counsel for the appellant has referred to Section 60 (b) of Easements Act, 1882 (for short 'the Act') to contend that in case of a

licensee, if acting upon the licence, the licensee has executed a work of permanent character and incurred expenses in the execution, the licence cannot be revoked.

Learned counsel for the appellant has further referred to the judgment passed by the Hon'ble Supreme Court in *Ram Sarup Gupta (dead) by LRs Vs. Bishun Narain Inter College and others* AIR 1987 (SC) 1242 to assert that since permanent structure has been constructed by the defendant-appellant, therefore, the licence has become irrevocable. The learned counsel has further referred to the judgment passed by the Hon'ble Supreme Court (2002) 3 Supreme Court Cases 175 *Inder Sain Mittal Vs. Housing Board, Haryana and others* to contend that legal plea can be raised for the first time at any stage of the proceedings.

I have examined written statement filed by the defendant. Defendant had asserted that he had become owner of the property by adverse possession. The defendant had taken the plea that he had forcibly taken possession of the property and constructed house in 1981. No plea in terms of Section 60 (b) of the Act was taken by the defendant.

Learned trial Court while framing issues did not frame any issue with regard to Section 60(b) of the Act because there was no pleading to that effect. Neither any argument to this effect was raised before the trial Court nor it was ever raised before the first Appellate Court.

No doubt, the plea of Section 60(b) of the Act is based on a statutory right. However, for establishing that statutory right, there has to be a foundation laid in the pleadings and evidence led by the parties. In the

absence of such pleadings and the evidence led, I am afraid that I cannot permit the appellant to raise such a plea in this Court for the first time.

Finding no merit in the present appeal, the same is dismissed.

(ANIL KSHETARPAL)
JUDGE

03.08.2017
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No